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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
0077021-000	03/07/00	LEANNIE J. FITZGERALD	0077021-000

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LR01/0905

EXAMINER
HUGH

ART UNIT	PAPER NUMBER
2771	

DATE MAILED: 04/05/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.
09/052,325

Applicant
Stockenberg et al.

Examiner
RUAY LIAN HO

Group Art Unit
2771



☒ Responsive to communication(s) filed on Jul 28, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 10 USPQ2d 1033, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-16 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-16 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

1. It is noted that there is no information disclosure statement submitted.
2. The preliminary amendment filed on 7-28-00 has been considered. Amendment in the specification, page 13, line 22, delete "which.", has not been entered because "which." was not found in line 22.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. Claims 1-6, 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Anglin et al.(USPN 5,862,322).

Regarding claim 1:

Each and every element of claim 1 is disclosed by Anglin et al., note: the claimed 'a system having first and second processes residing on first and second computers used with backup or restore operations' is shown in col.11, l.48-55 & col.,28, l.45-47,

the claimed 'each of said first and second computers are in communication with a data storage system' is shown in col.10, l.54-64 & col.11, l.48-55,

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the claimed 'storing data from at least said first and second computers and a network' is shown in col.10, 1.54-64 & col.11, 1.48-55,

the claimed 'first communication mechanism' is shown in col.35, 1.47-52,

the claimed 'second communication mechanism' is shown in col.35, 1.53-67,

the claimed 'determine means' is shown in col.36, 1.28-46.

Regarding claim 2:

Claim 2 is rejected for the similar rationale given for claim 1.

Regarding claim 3:

The claimed 'the first communication mechanism is a network socket' is shown in col.35, 1.47-52. The Anglin patent does not specifically disclose the claimed 'socket', however, it has disclosed the network communications and socket calls used over the network is well known to anyone skilled in the art, as described in the specification, page 18 of the present invent.

Regarding claim 4:

The claimed 'said second communication mechanism is a data storage system socket' is shown in col.35, 1.53-67.

Regarding claim 5:

Claim 5 is rejected for the similar rationale given for claim 1.

Regarding claim 6:

Claim 6 is rejected for the similar rationale given for claim 1.

Regarding claim 14:

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Claim 14 is rejected for the similar rationale given for claim 1.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anglin et al.(USPN 5,862,322) in view of Ji et al.(USPN 5,889,943).

Regarding claim 7:

The claimed 'creating a pair of communication mechanisms on a designated port' is shown in Ji et al. in col.11, 1.14-53.

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It would have been obvious to one with ordinary skills in the art at the time of the present invention was made to incorporate the communication mechanism creation technique disclosed by Ji et al. into the communications in a computing environment method disclosed by Anglin et al. to make the method more marketable by providing better communications support between end users.

Regarding claims 8-10:

Claims 8-10 are rejected for the similar rationale given for claim 7.

Regarding claim 11:

The claimed 'creating a third pair of communication mechanisms on a second designated port' is shown in Ji et al. in col.8, l.59 to col.9, l.67.

Regarding claims 12-13:

Claims 12-13 are rejected for the similar rationale given for claim 11.

Regarding claims 15-16:

Claims 15-16 are rejected for the similar rationale given for claims 6-7 and 14.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruay L. Ho whose telephone number is (703) 305-3834. The examiner can normally be reached on Monday - Friday from 10 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Yen Vu, can be reached on (703) 305-4393. The fax phone number for this Group is (703) 308-9051 or (703) 308-5403.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3800.



RUAY LIAN HO
PRIMARY EXAMINER